

- I would like to urge the FCC to revise the proposed rule under the Telephone Consumer Protection Act (TCPA) restricting the use of autodialers and pre-recorded messages to contact consumers on their wireless numbers.
- I am writing in response to your request for comments on the notice of proposed rulemaking to amend your regulations implementing the TCPA.
- Please consider revising your proposed rule under the Telephone Consumer Protection Act, which restricts the use of autodialers and pre-recorded messages to contact consumers on their cell phones
- The TCPA was originally implemented to limit the ability of marketers to randomly dial numbers of non-customers for the purpose of making unsolicited attempts to sell them a product or service. The rules that the FCC is now proposing would unduly extend that limitation to non-marketers who are calling the cell phones of individuals with whom they have a business relationship.
- The TCPA's restrictions on transmitting messages by cell phones originated at a time when consumers were charged a per call usage fee. There was a legitimate concern that consumers would incur additional charges by being called by parties when they had no preexisting or underlying business relationship. However, as the cell phone usage has proliferated, providers of cell phone service have discontinued per call charges in favor of flat monthly fees, so this is no longer the concern that it presented when the TCPA was initially enacted.
- The TCPA was enacted to address certain telemarketing activities, but the Congress and the FTC have interpreted "telemarketing" to exclude telephone calls to recover debts. The proposed rule does not recognize that distinction.
- Applying the proposed rule to debt collection activities will impede the ability of consumers to receive important information about payment information or the status of their debt.
- Predictive dialers enhance the compliance capabilities of debt collectors by eliminating human error, making it possible to restrict calls to certain numbers, to certain individuals, to certain hours and to a set number of calls.
- Many consumers are now using cell phones as their primary or exclusive form of telephonic communications, and increasingly, consumers are transferring their land line telephone numbers to a cell phone. As the proposed rules are currently written, if a land line number is transferred to a cell phone, and is inadvertently dialed, a penalty of \$500 per call can be imposed, regardless of intent. The proposed rules do not address this problem, and the TCPA provides no defense based on a bona fide error. Further, there is no cap on the penalty that may be imposed for dialing a number in error. Thus, if a wrong number is dialed unknowingly once a month over a two year period, a \$12,000 penalty is imposed. The easy portability of telephone numbers from land lines to cell phones makes this a very real problem for businesses.
- The Fair Debt Collection Practices Act governs communications between debt collectors and consumers for the purpose of collecting debt. It was the intent of Congress in passing the TCPA that it would not apply to the collection of debts. As such, the FCC should not be promulgating or enforcing regulations concerning communications between debt collectors and consumers for the purpose of collecting debt.

- Predictive dialers used by debt collectors do not generate random or sequential numbers, as do autodialers used by telemarketers to make unsolicited telephone calls to non-customers. Further, dialers used by debt collectors do not produce numbers using a random or sequential number generator. Instead, the telephone numbers in predictive dialers are those of known customers of the business, and the dialers direct the calls to those specific customers.
- Prerecorded calls to cell phones by debt collectors should be exempt from the proposed rule, since they do not affect the privacy rights of consumers and do not transmit unsolicited advertisements.